Box APPEAL BRIEF
EXPEDITED PROCEDURES EXAMINING
GROUP 2623

PATENT
0630-1845P

IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicant:	Jong-Hyun YOON	Conf. No.:	1937
Appl. No.:	10/667,383	Group:	2623
Filed:	September 23, 2003	Examiner:	J. R. Schnurr
For:	METHOD FOR PREVENTING DISCONNECTION OF AUDIO/VISUAL STREAM IN HOME NETWORK		

REPLY BRIEF UNDER 37 C.F.R. § 41.41

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
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Sir:

Appellant presents the following arguments with respect to the Examiner's Answer, and in furtherance of Appellant's Appeal Brief.

1. Giammaressi's disclosure has clearly been placed in issue. According to the Examiner's Answer, in the paragraph bridging pages 11 and 12, "appellant provides no specific explanation of how Giammaressi differs from the currently claimed invention except for the vague accusation that the Office has not met its burden for making a prima facie case."

Appellant respectfully disagrees with this conclusion.

While Appellant did state, in the last paragraph on page 14 of the Examiner's Answer,

that the Office has not met its burden of making out a *prima facie* case that "the total load on at least one of the video services resources" anticipated the claimed invention, Appellant then explained in great detail why, on page 15.

In this regard, the Examiner's Answer does not directly address Appellant's arguments in the last two paragraphs of page 15 of the Appeal Brief, which point out that (1) as stated in col. 6, lines 18+ of Giammaressi, ". . . a determination is made as to the amount of bandwidth required, from each of at least one bandwidth constrained resource, to process the request. This determination also considers the existing load placed upon the at least one bandwidth constrained resource due to other requests presently being satisfied by the information provider," and (2) Giammaressi mentions nothing about a server comparing transmission time of entire A/V streams and A/V stream transmission time according to a defined reproduction capability of the server required for reproducing A/V streams, as claimed, and the Office Action does not explain how or why determining an amount of bandwidth requirement from a bandwidth constrained resource and the existing bandwidth load due to other requests is the same as a server comparing transmission time of entire A/V streams and A/V stream transmission time according to a defined reproduction capability of the server required for reproducing A/V streams.

Moreover, the Response to Arguments section of the Examiner's Answer never explains how Giammaressi discloses a server comparing transmission time of entire A/V streams and A/V stream transmission time according to a defined reproduction capability of the server required for reproducing A/V streams, as claimed, and the Office Action does not explain how or why determining an amount of bandwidth requirement from a bandwidth constrained resource and the

existing bandwidth load due to other requests is the same as a server comparing transmission time of entire A/V streams and A/V stream transmission time according to a defined reproduction capability of the server required for reproducing A/V streams.

Instead, the Examiner's Answer, on page 11 speculates that comparing the overall transfer rate of the A/V streams being reproduced is analogous to "transmission time of entire A/V streams" and that a predetermined A/V stream transfer rate is analogous to "transmission time accor5ding to a defined reproduction capability of the server."

The Examiner continues in this vein by arguing, on page 12 of the Examiner's Answer, that "the bandwidth disclosed by Giammaressi is equivalent to the transfer rates disclosed by appellant."

No objective factual evidence is provided to support these conclusions of analogousness and of equivalency, so they are nothing more than unwarranted speculation, which cannot properly serve as the basis for a rejection under 35 USC §102 and/or §103.

Additionally, even if something is shown to be analogous to what is claimed and/or equivalent to what is claimed (which is not the case), the burden is on the Examiner to show that the claimed feature(s) is or are obvious feature(s) in view of the analogous and/or equivalent feature(s).

This, however has not been done, and the Examiner has not even attempted to do so. Instead, the final rejection and the Examiner's Answer are premised on the improper assumption that all that Giammaressi needs to disclose is something that is analogous to and/or equivalent to what is claimed.

Applicant respectfully submits that that conclusion is incorrect. What is in issue is the claimed invention, not something that may or may not be analogous to and/or equivalent to the claimed invention.

For example if the claimed invention were a disc brake system, and the Office showed that drum brake systems were equivalent systems, the drum brake system would not anticipate the claimed disc brake system, and something else would be needed to motivate one of ordinary skill in the art to modify the drum brake system to arrive at the claimed disc brake system.

Thus, a fundamental premise on which this rejection of the pending claims is based is fundamentally unsound.

Another way of addressing the Examiner's position is to note that Giammaressi does not explicitly disclose the claimed invention, nor does Giammaressi inherently disclose the claimed invention. For something to be inherently disclosed, it cannot be just possibly disclosed, nor can it be just probably disclosed. Rather, it must be necessarily disclosed. Inherency may not be established by probabilities or possibilities. What is inherent, must necessarily be disclosed. In re Oelrich, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981) and In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993).

The Examiner's position is that Giammaressi merely discloses something that is analogous to what is claimed, or something that is equivalent to what is claimed. However, that is not what is in issue. Exactly what is claimed is in issue.

2. Appellant respectfully submits that the Examiner's indication, on page 11 of the Examiner's Answer, that Giammaressi teaches that the requested bandwidth is compared to the bandwidth available from the server resources, is incorrect.

In this regard, Giammaressi discloses "*At step 208 the method 200 waits for a programming request from the subscriber. Upon receiving a program request, the method 200 proceeds to step 210 where the bandwidth required to provide the requested programming is determined. That is, a determination is made as to the amount of bandwidth required, from each of at least one bandwidth constrained resource, to process the request. This determination also considers the existing load placed upon the at least one bandwidth constrained resource due to other requests presently being satisfied by the information provider. As noted with respect to box 212, the bandwidth determination is made with respect to bandwidth requirements for at least one of video server resources (114-1, 108), video switch resources (108-SW), transport processor resources (122-TP), digital video modulator resources (122-DVM) and other system resources. At step 214 a query is made at to whether sufficient bandwidth exists to satisfy the programming requests. If the query at step 214 is answered affirmatively, then the method 200 proceeds to step 216 where the requested programming is provided to the customer or subscriber using the bandwidth appropriate to the requested programming. For example, in the case of the requested programming comprising a high definition program having an appropriate bandwidth of 9 Mbps from one or more of the various resources noted in box 212, and such bandwidth being available, the requested program is retrieved from the appropriate bandwidth programs 114-1A portion of the data storage unit 114-1 and provided to the subscriber. The*

method 200 then proceeds to step 208 to await the next programming request from the customer." (See column 6, lines 24-44).

As is apparent from this quoted, italicized language, Giammaressi mentions nothing about a server comparing transmission time of entire A/V streams and A/V stream transmission time according to a defined reproduction capability of the server required for reproducing A/V streams, as claimed, and the Examiner Answer does not explain how or why determining an amount of bandwidth requirement from a bandwidth constrained resource and the existing bandwidth load due to other requests is the same as a server comparing transmission time of entire A/V streams and A/V stream transmission time according to a defined reproduction capability of the server required for reproducing A/V streams.

3. With respect to the rejections based on Goldthwaite et al. (U.S. Patent Application Publication 2003/0154480), Seed (U.S. Patent Application Publication 2006/0015574), Lam et al. (U.S. Patent 6,917,569), Bachmat (US patent 6,189,071) and Brown (US Patent 5,822,530), Appellant respectfully submits that even if these references disclose a method for outputting A/V streams onto a screen in response to a user's request by a home network which includes a server for outputting audio/video streams and plural renderers connected to the server through a home network, they do not teach or suggest at least the recited "server which compares transmission time of entire A/V streams and A/V stream transmission time according to a defined reproduction capability of the server required for reproducing A/V streams, and then judges whether the A/V streams can be outputted", as recited in the independent claims rejected based

on these references..

4. Appellant respectfully submits that the present invention, as recited in independent claims 2, 6 and 18, cannot be rendered obvious based on the cited references, because the references as cited by the Examiner would not provide at least the recited "server which compares transmission time of entire A/V streams and A/V stream transmission time according to a defined reproduction capability of the server required for reproducing A/V streams, and then judges whether the A/V streams can be outputted" as in the claimed invention. Also, claims 3-5 and 7-17 which depend from independent claims 2 and 6, respectively, are allowable for at least the reasons discussed above with respect to independent claims.

Conclusion

All of the stated grounds of rejection are improper, and should be reversed, for reasons presented above.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Date: January 26, 2009

Respectfully submitted,

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